Supreme Court, U.S.
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No. 04-872

In the Supreme Court of the United States

SANDRA KUCERA, SARAH THERESE WINDER, KRISTIN ZUBEL, NATALIE BOLTON, PHILLIP SALISBURY, SAMANTHA BERG, TIMOTHY JOHNSON and GREGORY KAFOURY,

Petitioners,

v.

BILL BRADBURY, Secretary of State, DEMOCRATIC PARTY OF OREGON, JOHN NEEL PENDER and JAMES EDMUNSON,

Respondents.

On Petition for Writ of Certiorari to the Oregon Supreme Court

RESPONDENT BILL BRADBURY'S SUPPLEMENTAL APPENDIX

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

SANDRA KUCERA, an elector of Oregon and candidate for Vice President of the United States, SARAH THERESE WINDER, KRISTIN ZUBEL, and NATALIE BOLTON, each an elector of Oregon and signor of a petition for nomination of Ralph Nader for President of the United States and Sandra Kucera as Vice-President of the United States and as a circulator of said nominating petition, PHILLIP SALISBURY and SAMANTHA BERG, each an elector of and signor of a petition for nomination of Ralph Nader for President of the United States and Sandra Kucera as Vice-President of the United States, TIMOTHY JOHNSON, a circulator of said nominating petition who is not an elector of Oregon, GREGORY KAFOURY, an individual, an elector of Oregon and Co-Chair, Nader for President 2004 in Oregon,

Plaintiffs,

v.

BILL BRADBURY, Secretary of State,

Defendant.

Case No. 04C-18259
Honorable Paul J. Lipscomb

AFFIDAVIT OF JOHN LINDBACK

STATE OF OREGON)
) ss.
County of Marion)

I, John Lindback, being first duly sworn, depose and say:

1. I am the Director of the Elections Division in the Oregon Secretary of State's office and have served in that capacity for approximately the past three years. My responsibilities as the Director of the Elections Division include overseeing the process to determine whether a certificate for nomination of a candidate by individual electors qualifies the candidate for placement on the ballot.

2. I make this affidavit to summarize, to the extent pertinent, the procedures to determine whether to qualify a candidate for the ballot in Oregon by a nomination petition filed by individual electors.

Commencing Certificate of Nomination by Individual Electors

3. A candidate for public office may be nominated to partisan office by other than a major political party. A minor political party, assembly of electors or individual electors may nominate one candidate for each partisan public office to be filled at the general election by preparing and filing a certificate of nomination as provided in ORS 249.712 to 249.850.

4. Before beginning to circulate the certificate of nomination, the chief sponsor of the certificate shall file a signed copy of the prospective certificate with the Elections Division for approval. ORS 249.740.

5. Once the chief sponsors receive approval of the proposed certificate, they may begin gathering signatures on the approved signature sheets. A proposed certificate for nomination of Ralph Nader and Sandra Kucera as independent candidates for President and Vice President of the United States in

the 2004 General Election was approved for circulation for signatures.

6. Each elector signing a certificate of nomination made by individual electors shall include the residence mailing address of the elector. ORS 249.740(2).

7. The circulator is also required to certify on each signature sheet that the individuals signed the sheet in the presence of the circulator and that the circulator believes each individual is an elector registered in the electoral district. ORS 249.740(4). The sign and date rules are designed to prevent fraud.

8. The legislature has provided that "[n]o signature in violation of the provisions of this chapter shall be counted." ORS 249.008(1).

Submission of Signatures to the County Clerk for Verification

9. To qualify for the ballot based upon a certificate of nomination by individual electors, a certificate is required to contain a number of signatures of electors in the electoral district equal to not less than one percent of the total votes case in the electoral district for which the nomination is intended to be made, for all candidates for presidential electors at the last general election. ORS 249.740(1).

10. Before a petition for candidate nomination by individual electors is submitted to the Secretary of State for filing, it must be submitted to the county clerk for verification of the genuineness of signatures. The county clerk verifies on each signature sheet the number of signatures that are genuine signatures of registered voters within the county. The certificate is prima facie evidence of the facts stated in it. A signature not included in the number certified to be genuine by the county elections official "shall not be counted" by the Secretary of State when the petition is filed. ORS 249.008(1).

11. The legislature has directed the Secretary of State to promulgate rules to "prescribe a system for numbering all signature sheets" for certificates of nomination by individual electors, nominating or recall petitions, minutes of an assembly of electors and minor political party formation petitions. ORS 249.009(1)(b).

12. By rule, the Secretary has designated the 2004 State Candidate Manual: Individual Electors (Manual) and associated forms as the forms and procedures to be used by nonaffiliated candidates filing and running by individual electors for state elective office, such as Ralph Nader. OAR 165-010-0005(5). A copy of the Manual is attached as Exhibit 1.

13. The Manual expressly provides that "before submitting the signature sheets to the appropriate county elections official for signature verification, the chief sponsor must...[w]ithin each individual county, sequentially number each signature sheet in the space provided." Manual at 4.

14. The plaintiffs obtained a copy of the instructions which the Secretary sent to all county clerks. A copy of those instructions is attached as Exhibit 2 (from Travis Diskin Affidavit).

15. The Secretary of State issued instructions to all county clerks to follow for verifying the signature sheets for the Nader for President petition. A copy of those instructions is attached as Exhibit 3. The instructions direct the counties to screen and disqualify signature sheets that had circulator signature and date problems. The instructions defined what problems to look for regarding circulator signatures and dates. In the event of any question, the clerks were instructed to fax any problem sheet to the Elections Division for review, prior to verification of signatures, so that the Secretary could determine whether to disqualify the sheet based on the particular circulator signature or date problem.

16. The Election Division worked with county election officials throughout the signature verification process, and answered their questions regarding which signature sheets should be disqualified.

Review of Nominating Petition by Elections Division

17. Each county elections official certifies the number of genuine signatures submitted on each signature sheet, and returns the signature sheets to the chief sponsor of the certificate of nomination with the total number of valid signatures.

18. If the petition contains the total number of signatures needed to qualify for the ballot or more, the chief sponsor files the completed nominating petition with the Elections Division, along with the original petition sheets. The chief sponsor is not required to submit the sheets to the Secretary of State in sequential numbered order, only to the county clerk.

19. The Nader/Kucera campaign filed all signatures certified to be genuine by the county elections officials with the Elections Division.

20. The Elections Division then reviewed the signature sheets for compliance with state election law requirements. The purpose of the review by the Elections Division is to maintain uniformity and consistency in the interpretation of the elections law.

21. The Elections Division rejected 718 signatures for failing to comply with state election law requirements, such as sheets that violated the circulator sign and date rules and sheets that were totally uncertified by a county. An additional 10 signatures disqualified because they were duplicates. Other signatures were rejected for failure to provide an elector residence address, since the use of a post office box is not acceptable, or for errors in a county's calculation of the number of genuine signatures on each page.

22. Objections to the signatures were filed with the Secretary of State by the Service Employees International Union. Copies of those objections are attached as Exhibits 4-7. The union objected on a number of grounds, including duplicate signatures, improper circulator signatures, dating problems, and use of post office address instead of residence address. In addition, the union objected that a substantial number of signature sheets had been submitted to the counties without page numbers in violation of state election laws.

23. Objections to the signatures were filed by Roy Pulvers, on his own behalf as an individual elector, and on behalf of the Democratic Party of Oregon, on many of the same grounds. Copies of those objections are attached as Exhibits 8-14.

24. The petitioners also submitted letters. Copies of their letters are attached as Exhibits 15-17.

25. The Elections Division reviewed the objection that unnumbered signature sheets had been filed. The Elections Division contacted the county clerks to determine the total number of signature sheets submitted to county clerks without page numbers. Many counties rejected unnumbered signature sheets, requiring petitioners to number all sheets prior to submittal. In other cases, petitioners mailed in unnumbered sheets, or turned in unnumbered sheets and left before the error was detected by the county clerk. In those circumstances, the counties numbered the sheets.

26. Based upon the information provided by each county, signature sheets containing 2292 signatures were disqualified solely for the reason that they were submitted unnumbered to counties.

27. The purpose of the rule requiring the petitioner to consecutively number all signature sheets prior to submittal to county clerks for signature verification is twofold: it allows officials to readily locate any sheet or page of the petition to

which objections may be made or filed, and second, to avoid the possibility of fraud which may occur by tampering with sheets after county certification. The numbers are necessary to allow the counties to create a database in order to check for duplicates. Requiring numbered pages prior to submittal also shows that all pages have been submitted by the chief sponsor of the petition, and it prevents tampering by insertion of additional signatures after a petition has been filed. Here, the chief sponsors submitted 1062 unnumbered signature sheets -- most submitted in the last few days before the filing deadline – contrary to the requirement in the Manual that signature sheets "*must*" be numbered by a chief sponsor "*before*" submittal to the county election officials for signature verification.

28. The number of valid signatures that the Nader/Kucera campaign needed to qualify the candidates for the ballot was 15,306. The Secretary of State determined that the total number of qualified signatures submitted was 15,088, leaving Nader/Kucera 218 short of the 15, 306 valid signatures needed to qualify for the ballot.

DATED this 7th day of September, 2004.

/s/ John Lindback
JOHN LINDBACK

SUBSCRIBED AND SWORN to before me this 7th day of September, 2004.

/s/ Shannon M. Ross
Notary Public for Oregon
My Commission Expires: 5/7/2008

Filing Certificate of Nomination by Individual Electors (ORS 249.720(1)(e) and 249.740)

The following information for nonaffiliated (independent) candidates is provided in the order in which the activities generally occur and includes explanations and time frames for each activity.

ALL CANDIDATES FOR PUBLIC OFFICE

Qualifications for various public offices differ. Before filing, review the constitutional and statutory requirements of the office for which you plan to declare your candidacy. Candidates for partisan offices file under ORS chapter 249. February 26, 2004, is the last day for a candidate filing by petition of individual electors to register as non-affiliated to meet the requirement that the candidate not be a member of a major or minor political party within 180 days of the filing deadline.

Warning: *If a person has filed nominating petitions or declarations of candidacy for more than one lucrative office without first filing a written withdrawal, all filings by the person are invalid. ORS 249.013(3).*

SECRETARY OF STATE

Whenever requested, the Elections Division provides the approved candidate filing forms:

- Certificate of Nomination by Individual Electors (SEL 114);
- Petition for Independent Nomination Signature Sheet (SEL 122);
- Statement One or More/No Petition Circulators Will Be Paid (SEL 300); and
- Statement of Organization (one of the following must be filed):

-Candidate's Statement of Organization (SEL 220).

-Statement of Organization Designation of Political Committee and Appointment of Treasurer and Directors (SEL 221).

If the chief sponsor of a nominating petition by individual electors are receiving contributions or making expenditures that will not be reported by the prospective candidates, the individuals are required to establish a political committee by filing a Statement of Organization Designation of Political Committee and Appointment of Treasurer and Directors (SEL 221) and must file contribution and expenditure reports.

Warning: *All signature sheets must be approved in writing by the Elections Division before circulating. Failure to do so will result in the rejection of those signature sheets.*

CHIEF SPONSOR OF CERTIFICATE

Step 1:

The candidate files a Candidate's Statement of Organization (SEL 220) with the Elections Division unless the candidate:

- serves as the candidate's own treasurer;
- does not already have an open principal campaign committee; and
- does not expect to receive or spend more than $300 for the entire election.

If the candidate meets these three requirements, the candidate is not required to file a Statement of Organization or contribution and expenditure reports. However, if at any time that candidate exceeds $300 in either contributions or expenditures, the candidate must then file a Statement of Organization and contribution and expenditure reports. The $300 includes personal funds spent for any campaign-related costs, such as any expense incurred in circulating a nominating petition and paying a voters' pamphlet statement filing fee.

Note: *Most candidates for federal office in Oregon must file their campaign finance information with the Federal Elections Commission (1-800-424-9560). Candidates for United*

State Senator must file their campaign finance information with the Secretary of the Senate (202-224-0322) at: Office of Public Records, 232 Hart Senate Office Building, Washington, DC 20510-7116.

When to File

Within three business days of receiving a contribution or making an expenditure, but no later than when the Certificate of Nomination by Individual Electors (SEL 114) is filed. See the *2004 Campaign Finance Manual* for specific guidelines and instructions.

If the candidate has an established principal campaign committee the candidate or treasurer must file an amended Candidate's Statement of Organization (SEL 220) not later than the date of the filing of candidacy, to reflect any changes (designation of office sought, applicable election, etc.). A candidate may have only one principal campaign committee.

***Note:** If filing for a new office involves changing filing officers, e.g., county to state, refer to the "Changing Office" section of the 2004 Campaign Finance Manual.*

Step 2:

Before circulating the nominating petition, the chief sponsor files a prospective petition with the Elections Division. See pages 12 and 13 of this manual for signature sheet requirements.

CHECKLIST FOR FILING A CERTIFICATE OF NOMINATION

Below is a checklist of all the components required to file a certificate of nomination. Check that you have not overlooked any of the components and that all of the forms have been completed in their entirety.

☐ Certificate of Nomination by Individual Electors (SEL 114);

☐ Statement One or More/No Petition Circulators Will Be Paid (SEL 300); and

☐ Petition for Independent Nomination Signature Sheet (SEL 122) with line one signed and completed by the candidate.

SECRETARY OF STATE

As soon as possible, the Elections Division reviews the prospective petition for the required information. When the prospective petition complies with all requirements, the Elections Division will give written approval to circulate the petition and will advise the chief sponsor of the number of signatures required.

CHIEF SPONSOR OF CERTIFICATE

Step 1:

Before circulating the nominating petition for signatures, the chief sponsor reviews with the circulators the requirements for circulating the petition. See page 13. The guidelines are:

- All signers must be active registered voters within the candidate's electoral district;
- All signers on any one petition sheet must be registered in the same county;
- All signatures must be original signatures;
- All signatures must be personally witnessed by the petition circulator and the circulator's certification must be completed and dated after all signatures have been collected; and
- No additional signatures may be added to that signature sheet once the circulator has signed the certification and dated the sheet.

Warning: *Violations of the circulator requirements may result in conviction of a felony with a fine of up to $100,000 and/or prison for up to five years.*

Step 2:

Before submitting the signature sheets to the appropriate county elections official for signature verification, the chief sponsor must:

- Sort the signature sheets by county;

Within each individual county, sequentially number each signature sheet in the space provided; and

- Submit signature sheets to the appropriate county elections offices for verification, in sufficient time for the verification process to be finished before submitting the completed nominating petition to the Elections Division.

COUNTY ELECTIONS OFFICIAL

As soon as possible, the county elections official certifies the signatures and returns the signature sheets to the chief sponsor of the certificate of nomination with the total number of valid signatures.

CHIEF SPONSOR OF CERTIFICATE

The chief sponsor files the completed nominating petition with the Elections Division. The petition consists of:

- New Filing of Certificate of Nomination by Individual Electors (SEL 114), either:

–Endorsed on the filing form by the nominee;

-OR-

–Endorsed on an attached acceptance statement from the nominee; and

Note: If the acceptance statement is not submitted with the certificate of nomination it may be submitted up to the filing deadline day.

- Verified signature sheets with the sufficient number of signatures.

When to File

No sooner than September 15, 2003, and no later than 5:00 p.m., August 24, 2004, for the 2004 General Election.

General Information

The following information gives a general overview of other procedures relating to candidates filing for office, including submitting a voters' pamphlet statement, withdrawal of candidacy, contribution and expenditure reporting, conduct of elections, signature sheet requirements and definitions of election law terminology.

State Voters' Pamphlet (ORS Chapter 251)

A federal or state candidate may file a statement for inclusion in the state voters' pamphlet. A county candidate, metropolitan service district candidate or candidate of a city with a population of 50,000 or more may file a statement for inclusion in the state voters' pamphlet if no county voters' pamphlet is published.

SECRETARY OF STATE

The Secretary publishes and distributes the state voters' pamphlet. Candidate information to be published includes:

- Candidate photograph;
- Office for which the candidate has filed;
- Candidate's name and party affiliation;
- Candidate's required information (occupation, occupational background, educational background and prior governmental experience);
- Candidate's optional information (the candidate's statement of reasons for seeking nomination or election); and
- Name of the candidate or the candidate's principal campaign committee that provided the candidate's information.

Voters' Pamphlet Distribution

The mailing of the voters' pamphlet must be completed no later than October 13, 2004, for the 2004 General Election.

CHECKLIST FOR FILING A VOTERS' PAMPHLET STATEMENT

Below is a checklist of all the components required to file a voters' pamphlet statement. Check that you have not overlooked any of the components and that all of the forms have been completed in their entirety.

☐ One original and two identical copies of Candidate's Statement for State Voters' Pamphlet (SEL 430);

☐ A Statement of Endorsement (SEL 400) if the candidate's statement uses the name or title of another person or organization as supporting or endorsing the candidate. A separate Statement of Endorsement must be filed for each person or organization named, unless the statement of the person or organization is a quotation, identified by source and date, which has been previously published;

☐ Phone numbers and fax numbers, if available, for possible contact by the Elections Division for any corrections;

☐ Appropriate voters' pamphlet filing fee: and

☐ Two identical 5" X 7" black and white photographs (ORS 251.075):

-shall be a conventional photograph with a plain background;

-shall show the face or the head, neck and shoulders of the candidate;

-shall not be more than four years old when the portrait is filed;

-shall not include the hands or anything held in the hands of the candidate;

-shall not show the candidate wearing a

judicial robe, hat or a military, police or

fraternal uniform; and

-shall not show the uniform or insignia of any organization.

When to Submit Forms and Photographs

No later than 5:00 p.m. on August 24, 2004, for the 2004 General Election.

SECRETARY OF STATE

Step 1:

The Elections Division reviews "required information" submitted on Candidate's Statement for State Voters' Pamphlet (SEL 430), photographs and statements of endorsement for compliance.

The review must be completed no later than the third business day after the voters' pamphlet filing deadline, 5:00 p.m., August 27, 2004.

Step 2:

If any of the reviewed material is insufficient, the Elections Division shall attempt to contact the candidate regarding the insufficiencies no later than the fifth business day after the voters' pamphlet filing deadline, 5:00 p.m., August 31, 2004.

STATE CANDIDATES

Upon notification of insufficiencies, the candidate may provide corrections to the Elections Division no later than the seventh business day after the voters' pamphlet filing deadline, 5:00 p.m., September 2, 2004. If revisions are not received by the seventh day, the Elections Division will take the appropriate action pursuant to ORS 251.087(5).

Withdrawal of Candidacy or Nomination (ORS 249.830)

ALL CANDIDATES

In order to withdraw from candidacy or nomination, a candidate must file a Withdrawal of Candidacy or Nomination (SEL 150).

When to Withdraw

No later than 5:00 p.m. on August 27, 2004, for the 2004 General Election.

Contribution and Expenditure Reporting (ORS Chapter 260)

Every candidate and prospective candidate is required to establish a principal campaign committee within three business days of receiving or spending any money to support the candidacy unless the candidate:

- serves as the candidate' own treasurer;
- does not already have an open principal campaign committee; and
- does not expect to receive or spend more than $300 for the entire election.

If the candidate meets these three requirements, the candidate is not required to file a Statement of Organization or file contribution and expenditure reports. However, if at any time the candidate exceeds $300 in contributions or expenditures, the candidate must file a Statement of Organization and contribution and expenditure reports.

This includes expenditures of personal funds by the candidate or treasurer, such as payment of the filing fee if the candidate files by declaration, any costs related to circulating a nominating petition, and any voters' pamphlet costs.

Note: *Most candidates for federal office in Oregon must file their campaign finance information with the Federal Elec-*

tions Commission (1-800-424-9560). Candidates for United State Senator must file their campaign finance information with the Secretary of the Senate (202-224-0322) at: Office of Public Records, 232 Hart Senate Office Building, Washington, DC 20510-7116.

Note: If filing for a new office involves changing filing officers, e.g., county to state, refer to the "Changing Office" section of the 2004 Campaign Finance Manual.

ALL CANDIDATES

A candidate or the candidate's treasurer files contribution and expenditure reports for the election. "Candidate" includes:

- A candidate who files for office;
- A candidate who withdraws or is disqualified;
- An individual who files a prospective petition for candidacy, even if signatures are never filed; and
- An individual who has received a contribution or made an expenditure to secure the nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is received and retained or the expenditure is made, and whether or not the name of the individual is printed on a ballot.

Oregon election law requires all candidates or their principal campaign committees to submit timely and accurate contribution and expenditure reports. All candidates and committees must maintain detailed records of all contributions received and expenditures made. The statutes on campaign finance establish accounting periods and filing deadlines for reports of contributions and expenditures and specify the information that must be included in the reports. In addition, the statutes provide for civil penalties up to $10,000 for filing late or insufficient reports.

Note: *If a candidate receives contributions or makes expenditures greater than $2000 before May 18, 2004, the candidate must file contribution and expenditure reports for the 2004 Primary Election.*

A candidate or committee that does not expect to receive or spend more than $2,000 to support a candidacy **may** qualify to file a Certificate of Limited Contributions and Expenditures (PC 7). See the *2004 Campaign Finance Manual* for information on who is eligible to file a certificate.

The candidate and treasurer are jointly responsible for the committee and for filing the contribution and expenditure reports.

If the treasurer violates any campaign finance regulations, the candidate is also in violation.

State candidates and committees that receive and expend more than $50,000 in an election must file their detailed reports by electronic transmission.

See the *2004 Campaign Finance Manual:*

- To determine when your committee is required to file reports;
- For the appropriate forms for filing the reports; and
- For instructions on how to complete the contribution and expenditure report forms; and
- For format requirements for filing reports electronically.

Conduct of Elections (ORS Chapter 254)

SECRETARY OF STATE

The Elections Division prepares and files with the county elections official a statement of candidates and measures for placement on the ballot.

The statement must be filed no later than 5:00 p.m. on September 2, 2004, for the 2004 General Election.

For 2004 only, the statement for Presidential and Vice Presidential candidates must be filed no later than September 8, 2004.

COUNTY ELECTIONS OFFICIAL

Step 1:

The county elections officials conduct the election on November 2, 2004.

Step 2:

The county elections official delivers the abstract of election results for national and state offices to the Elections Division no later than November 22, 2004, for the 2004 General Election.

SECRETARY OF STATE

The Elections Division completes the post-election procedures:

- Canvasses county abstracts and issues proclamation declaring results of the election; and
- Issues certificates of election to national and state candidates. The post-election procedures must be completed no later than December 2, 2004, for the 2004 General Election.

Signature Sheet Requirements (ORS 249.740)

All signature sheets must be approved in writing by the Elections Division before circulating. Failure to do so will result in the rejection of those signature sheets.

SIGNATURE SHEET REQUIREMENTS

Each signature sheet shall include:

- Candidate's name, office for which the candidate is running and district or position number;
- Statement that one or more/no petition circulators will be paid;
- Statement that signers on any one signature sheet must be active registered voters from the same county;
- Area for placing the petition identification number;
- Area for placing the signature sheet number;

Petition circulator's certification stating that each person who signed the petition did so in the circulator's presence and the circulator believes each signer is an elector;

- Area for providing date when circulator signed certification;
- Area for placing the county elections official's certification;
- Ten (10) signature lines unless a variation is approved by the Secretary of State; and
- Each signature line will include spaces for:

-Signature (required);
-Printed name; *
-Residence address; and*
-Date of signing petition. *

*The fields are required to be on the signature sheets. However, an elector's printed name, residence address and date they signed the petition are not mandatory under Oregon law. These information fields, while optional, provide valuable assistance to county elections officials who are performing the signature verification. If these fields are not completed, the signatures may still be submitted for signature verification. If the county elections official can determine from the signature alone that the elector was an active registered voter at the time the elector signed the petition, that signature will count to-

ward the total signature requirement for the petition. If no date is provided by the elector, the signatures are considered valid only if the county elections official determines that the elector was an active registered voter during the period beginning the date the petition was approved for circulation through the date of signature verification.

Warning: Circulators are advised to encourage signers to complete the optional information whenever possible. Failure to provide the optional information increases the possibility that the signature cannot be confirmed to be that of an active registered voter, and thus reduces the chances of the petition having adequate verifiable signatures to complete the nominating petition.

SIGNATURE SHEET FORMAT

The format to be followed in preparing candidate signature sheets shall be:

- Standard 8-1/2" x 11" size paper;
- At least 20 pound (weight) uncoated paper;
- Printed on white or pastel colored paper stock to render text readable and enable election officials to readily verify signatures; and
- Size and style of type are left to the discretion of the petitioner, as long as it is deemed readable and approved for circulation by the Elections Division.

Warning: *Logos, slogans, advertisements, party affiliation, etc. or any symbol or language which may be construed as advocacy are not permitted on the cover or signature sheet. Failure to comply with this requirement may result in rejection of those sheets and disqualification of those signatures.*

***Warning:** Any proposed variation to an approved signature sheet must be resubmitted and approved by the Elections Division before circulating. Failure to do so will result in the rejection of those signature sheets.*

Petition Signer Requirements (ORS 249.740)

Electors' signatures on candidate nominating petitions must be verified by the appropriate county elections official before filing the completed petition with the Elections Division. Requirements for signers include:

- Signers on any one signature sheet must be active registered voters in the same county; and

Each signer must be an active registered voter of the candidate's electoral district at the time of signing the petition.

Circulator Requirements (ORS 249.740)

The circulator of the candidate nominating petition must sign the circulator's certification, stating that:

"I hereby certify every person who signed this sheet did so in my presence and I believe each person is a qualified voter of the state of Oregon."

The circulator shall complete the date when the certification is signed and shall not collect any additional signatures on that sheet after dating the certification.

***Warning:** Violations of the circulator requirements may result in conviction of a felony with a fine of up to $100,000 and/or prison for up to five years.*

Signature and Distribution Requirements (ORS 249.740)

For any office, the number of verified signatures required to place a candidate on the ballot by individual electors is *one percent* of votes cast in the electoral district for which the nomination is intended, for all candidates for presidential

electors at the last presidential election. The number of valid signatures needed for a statewide office is 15,306.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

SANDRA KUCERA, an elector of Oregon and candidate for Vice President of the United States, SARAH THERESE WINDER, KRISTIN ZUBEL, and NATALIE BOLTON, each an elector of Oregon and signor of a petition for nomination of Ralph Nader for President of the United States and Sandra Kucera as Vice-President of the United States and as a circulator of said nominating petition, PHILLIP SALISBURY and SAMANTHA BERG, each an elector of and signor of a petition for nomination of Ralph Nader for President of the United States and Sandra Kucera as Vice-President of the United States, TIMOTHY JOHNSON, a circulator of said nominating petition who is not an elector of Oregon, GREGORY KAFOURY, an individual, an elector of Oregon and Co-Chair, Nader for President 2004 in Oregon,

Plaintiffs,

v.

BILL BRADBURY, Secretary of State,

Defendant.

Case No. 04C-18259
Honorable Paul J. Lipscomb

SECOND AFFIDAVIT OF JOHN LINDBACK

STATE OF OREGON)
) ss.
County of Marion)

I, John Lindback, being first duly sworn, depose and say:

1. I am the Director of the Elections Division in the Oregon Secretary of State's office and have served in that capacity for approximately the past three years. My responsibilities as the Director of the Elections Division include overseeing the process to determine whether elections petitions qualify for the ballot.

2. I make this affidavit to summarize, to the extent pertinent, the procedures for verifying the circulator's signature and confirming compliance with the date requirement on candidate petitions in Oregon.

Signature Verification Procedures

3. To qualify a candidate for the ballot, the campaign must submit an adequate number of valid petition signatures. Upon submission of petition sheets, county officials review the sheets to verify, among other things, that each one bears the circulator's signature. In that process, county officials follow procedures established by the Secretary of State, as the chief elections officer of the state. If a sheet does not bear a circulator's signature, it is disqualified. If a sheet bears what appears to be a signature, it is generally accepted without more. If a sheet bears a mark, but the mark is illegible or appears to be initials, county officials identify that sheet for further review by my office. On further review, we seek to confirm that, despite appearances, the mark is the purported circulator's valid signature. In those circumstances, using the printed name under the circulator's signature, we attempt to locate a voter registration card for the circulator. If the signature on the sheet reasonably can be said to match the signature on the card, the signature is accepted; if not, the sheet is dis-

qualified. These aspects of our process are historical and apply to every type of elections petition.

4. Since 1999, nonregistered voters have been eligible to circulate petitions. That creates an additional burden on an already time-constrained process, in that alternative means are now permitted to verify the signatures of nonregistered circulators. This is a narrow exception to the longstanding rule that extraneous proof—beyond the circulator's voter registration and on other petitions in the Secretary's possession—of a circulator's signature generally is not permitted.

5. It is also a longstanding rule that initials may not be used in lieu of a signature. Of course, some people's actual signatures appear similar to initials. If the circulator's signature, as shown on the voter registration card or on another permissible exemplar, confirms that the circulator's signature simply appears like initials, then the signature is accepted. But if the exemplar shows a different signature, then the initialed petition sheet is disqualified.

6. I do not consider myself an expert in handwriting analysis, nor is that considered a requirement for my position. That said, in early 2002 the staff of the Elections Division, including myself, received classroom training from document experts employed by the State Crime Laboratory on issues related to signature verification. In addition, I attended a similar training session by State Crime Laboratory personnel at the 2002 summer conference of the Oregon Association of County Clerks.

7. It bears emphasis that our practice is to accept a purported circulator's signature if there is any reasonable way to do so.

8. The certification requirement and signature verification process do help disclose suspicious signatures and likely fraud. For example, in 2000 Kelly Highley was convicted of signature fraud, after Yamhill County personnel examining

the signatures suspected forgeries on sheets certified by Ms. Highley. Even in the most recent initiative cycle we have observed several potential cases of criminal signature fraud which we are pursuing with the Criminal Justice Division of the Attorney General's Office.

Procedures to Confirm Compliance with the Date Requirement

9. In December 2002, the Secretary of State promulgated amendments to the *2002 Candidates Manual*. Those amendments included the new requirement that the circulator date the certification on each sheet. New petition sheet forms were included with these amendments, adding a field for entry of the date. An excerpt of the pertinent text, as amended—including the updated form—is attached as Exhibit 1 to this affidavit. At that time, the date requirement also was added with respect to other types of elections petitions.

10. Because the date is considered a part of the circulator's certification, failure to properly complete it constitutes a failure to certify the petition sheet. In those circumstances, the defective petition sheet is disqualified.

11. Similarly, in furtherance of the purpose to prevent fraud, the Secretary has interpreted the requirement of a dated signature to disqualify sheets bearing alterations (such as stricken material), but has permitted corrections of a dating error by re-dating and re-signing.

12. In implementing the date requirement, we have encountered numerous scenarios that we had not originally anticipated. Applying the date requirement to each of those scenarios, our guiding principle is to ask whether the face of the sheet tells a clear story of how the sheet was completed and, if so, whether it was completed properly.

13. Where there is no date, obviously the sheet is not completed properly. It is disqualified.

14. Where the sheet is dated before the elector signatures, the sheet itself tells the clear story of how it was completed, but that clear story discloses that the sheet was completed improperly. The circulator cannot properly certify that the elector signatures on the sheet were affixed in the circulator's presence, and that the circulator believes each signor to be an eligible voter, until after the elector signatures have been affixed.

15. Similarly, a "post-dated" certification (a certification bearing a date after submission of the petition sheets to the Secretary of State), on its face, tells a clear story of how it was completed, but it is not completed properly. Where the certification is post-dated, it appears that the circulator seeks to defer responsibility for certification. For our purposes, we require the circulator's present certification. We do, however, treat a post-dated *year* as a simple error and therefore overlook it.

16. Where information is stricken on the date line, and other information has been substituted, the face of the sheet does not tell a clear story demonstrating that it was filled out properly. One possible scenario (the "innocent slip of the pen" scenario) is that the circulator signed it, dated it erroneously, realized the error, struck the error, and redated correctly. But another possibility is that the circulator signed improperly—perhaps before witnessing the elector signatures—conveyed the sheets to another person, and that the other person fraudulently altered the circulator's certification. Because it is impossible to tell that the sheet was completed properly, the sheet is disqualified.

17. On the other hand, where a date has been stricken and another written in, the sheet is accepted if either date would be proper. Also, where the date has been expressed as a range, but it is clear from the face of the sheet that it was dated all at once, the sheet is accepted if the last date in the range would be proper. In addition, where it is apparent that the circulator

has used the "European" format for dating, switching the position of the month and the date, the sheet is accepted if the date is otherwise proper. Finally, if there is an error in the year given by the circulator, and the sheet was not in circulation during the year given, it is treated as a simple error and the sheet is accepted if the date is otherwise proper.

18. These rules were openly applied in November 2003, during the verification process for the referendum that became Measure 30.

19. When initiative petitions submitted for early verification during the current election cycle included substantial numbers of sheets disqualified for noncompliance with the date requirement, I invited all chief petitioners who had received approval to circulate 2004 initiative petitions to a meeting. At that meeting on June 2, 2004, I explained in detail our procedures and interpretations of the date requirement. I also distributed copies of a sheet detailing "acceptable" and "not acceptable" deviations from simple compliance.

20. In early July 2004, a number of supporters of various initiative petitions brought suit in federal court challenging, among other things, the date requirement. The plaintiffs in that case were represented by plaintiffs' counsel in this case, Ms. Meek and Mr. McDougal. Plaintiff Kafoury was present during the proceedings, held during July. As co-chair of the campaign, Mr. Kafoury was on notice at least by that time that compliance with the date requirement is mandatory.

21. Moreover, on July 30, 2004, I (and Brenda Bayes of my office) discussed candidate petition requirements with Travis Diskin of the Nader campaign. Ms. Bayes memorialized that telephone conference with a note to our file. That memo is attached as Exhibit 2 to this affidavit.

22. During that conversation, Mr. Diskin asked about the requirements for the circulator's certification. We explained that the circulator must sign and date the certification. We

specifically explained that the circulator must not use initials. We further explained that if an error is made with the date, the circulator should simply re-sign and re-date the sheet, but should not strike out material. That information is memorialized in paragraph 3 of Ms. Bayes' memo.

DATED this 8th day of September, 2004.

/s/ John Lindback
JOHN LINDBACK

SUBSCRIBED AND SWORN to before me this 8th day of September, 2004.

/s/ Carol J. Watson
Notary Public for Oregon
My Commission Expires: 8/29/2008

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

SANDRA KUCERA, an elector of Oregon and candidate for Vice President of the United States, SARAH THERESE WINDER, KRISTIN ZUBEL, and NATALIE BOLTON, each an elector of Oregon and signor of a petition for nomination of Ralph Nader for President of the United States and Sandra Kucera as Vice-President of the United States and as a circulator of said nominating petition, PHILLIP SALISBURY and SAMANTHA BERG, each an elector of and signor of a petition for nomination of Ralph Nader for President of the United States and Sandra Kucera as Vice-President of the United States, TIMOTHY JOHNSON, a circulator of said nominating petition who is not an elector of Oregon, GREGORY KAFOURY, an individual, an elector of Oregon and Co-Chair, Nader for President 2004 in Oregon,

Plaintiffs,

v.

BILL BRADBURY, Secretary of State,

Defendant.

Case No. 04C18259

AFFIDAVIT OF JEANNIE BERG

STATE OF OREGON)
) ss.
County of Multnomah)

I, Jeannie Berg, having been first duly sworn, hereby depose and state:

1. I am currently the Election Protection Coordinator for America Coming Together (ACT). In this position, I am responsible for overseeing efforts to ensure that all Oregonians who wish to vote are able to do so and that their votes are counted. Previously, I served as Precinct Program Director for ACT.

* * * * *

CIRCULATOR SIGNATURE AND DATING VERIFICATION

15. The requirement that circulators sign their name legibly is a historical requirement in Oregon and one that serves to prevent fraud. I was aware as early as 1998 that the Secretary of State began rejecting sheets where the signature was illegible or where the circulator only signed initials. In our efforts to improve the integrity of the initiative process, the VEP supported the Secretary of State's strict enforcement of this requirement as a way to improve circulator accountability.

16. The Secretary of State adopted the circulator dating requirement in 2002. I personally recommended to John Lindback that the Secretary adopt this requirement as a means for improving accountability and preventing fraud. We also made other recommendations. I believed that the dating requirement would help hold circulators more accountable based on my experience trying to investigate and prove fraud. At my direction, VEP staff would attempt to contact circulators whose pages contained questionable signatures and were often told, "I did not collect signatures past x date." I can re-

call one specific situation where I reviewed the sponsorship sheets for initiative petition 168 (2002), the term limits measure. It was obvious that a number of signatures were forged on those sheets, because the signatures did not resemble the voter registration card and because individuals told our investigators that they did not sign. At my direction, VEP staff talked with the circulator about the discrepancy. He signed an affidavit stating that he only collected the "good signatures," for example, those appearing on lines 1-15. He said someone else must have forged the signatures after he returned them to the campaign. I provided this affidavit to the elections division along with a complaint alleging fraud. Had this circulator been required to date his signature, it would have been easier to show that he either did or did not submit the forged signatures.

* * * * *

THE SECRETARY'S RULES

29. The problems I experienced in monitoring the Nader signature gathering campaign demonstrates the importance of the prior sequential rule. That rule accomplishes two things. One, it makes the Chief Sponsor accountable for his submissions to the county. This is because only the Chief Sponsor knows how many signatures have been submitted previously. Also, in my experience running campaigns, the act of numbering sheets is the last step in the process and indicates that I am satisfied that the signatures were gathered lawfully and that the sheets comply with the applicable standards. Finally, any provision that requires the Chief Sponsor to exercise control increases accountability and helps deter fraud.

30. The second purpose served by the prior sequential numbering rule is administrative ease and transparency in the process. The process of reviewing the Nader signature sheets is a case in point. Because of the Chief Sponsor's failure to

number sheets and his subsequent alteration of sheet numbers, it has been extremely difficult to identify and track problems.

* * * * *

32. The Secretary's strict enforcement of the circulation verification requirement also serves to deter fraud. In my experience, circulators have been able to deny responsibility for obvious fraud by claiming that they did not collect a signature. Other circulators give inaccurate information about their address, again in order to avoid being held responsible. In my opinion, any rule that strengthens the Secretary's ability to accurately identify the circulator and eliminate circulator excuses deters fraud.

DATED this 7th day of September, 2004

/s/ Jeannie Berg
JEANNIE BERG

SUBSCRIBED AND SWORN to before me this 7th day of September, 2004.

/s/ Laurie Kanouse
Notary Public for Oregon
My Commission Expires: 1/28/2006

18.082 Effect of entry of judgment. (1) Upon entry of a judgment, the judgment:

(a) Becomes the exclusive statement of the court's decision in the case and governs the rights and obligations of the parties that are subject to the judgment;

(b) May be enforced in the manner provided by law;

(c) May be appealed in the manner provided by law;

(d) Acts as official notice of the court's decision; and

(e) May be set aside or modified only by the court rendering the judgment or by another court or tribunal with the same or greater authority than the court rendering the judgment.

(2) A general judgment incorporates a previous written decision of the court that decides one or more claims in the case and that:

(a) Is not a judgment;

(b) Is consistent with the terms of the general judgment and any limited judgments in the case; and

(c) Reflects an express determination by the court that the decision be final as to the claim or claims resolved.

(3) Upon entry of a general judgment, any claim in the action that is not decided by the general judgment or by a previous limited judgment, that has not been incorporated into the general judgment under subsection (2) of this section, or that cannot be decided by a supplemental judgment, is dismissed with prejudice unless the judgment provides that the dismissal is without prejudice.

(4) Subsection (3) of this section does not affect the right of any party to assign error on appeal to any decision of a court made by order during an action.

(5) Subsection (3) of this section does not apply to a general judgment of dismissal. Except as otherwise provided by

law, by the Oregon Rules of Civil Procedure or by the terms of the judgment, a general judgment of dismissal is without prejudice as to any claim or charge in the action.

(6) If a document labeled as a decree is filed with the court administrator, or a judgment document is filed with the court administrator that does not indicate whether the judgment is a limited, general or supplemental judgment, and the court administrator fails to comply with ORS 18.058 and makes an entry in the register indicating that a judgment has been filed with court administrator, the document has the effect of a general judgment entered in circuit court. [2003 c.576 §11]

183.400 Judicial determination of validity of rule. (1) The validity of any rule may be determined upon a petition by any person to the Court of Appeals in the manner provided for review of orders in contested cases. The court shall have jurisdiction to review the validity of the rule whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

(2) The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule or order in the manner provided by law.

(3) Judicial review of a rule shall be limited to an examination of:

(a) The rule under review;

(b) The statutory provisions authorizing the rule; and

(c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.

(4) The court shall declare the rule invalid only if it finds

that the rule:

(a) Violates constitutional provisions;

(b) Exceeds the statutory authority of the agency; or

(c) Was adopted without compliance with applicable rulemaking procedures.

(5) In the case of disputed allegations of irregularities in procedure which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact. The court's review of the master's findings of fact shall be de novo on the evidence.

(6) The court shall not declare a rule invalid solely because it was adopted without compliance with applicable rulemaking procedures after a period of two years after the date the rule was filed in the office of the Secretary of State, if the agency attempted to comply with those procedures and its failure to do so did not substantially prejudice the interests of the parties. [1957 c.717 §6; 1971 c.734 §9; 1975 c.759 §9; 1979 c.593 §17; 1987 c.861 §3]

246.110 Secretary of State as chief elections officer. The Secretary of State is the chief elections officer of this state, and it is the secretary's responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws. [1957 c.608 §2; 1979 c.190 §5; 1995 c.607 §1]

246.120 Directives, instructions and assistance to county clerks. In carrying out the responsibility under ORS 246.110, the Secretary of State shall prepare and distribute to each county clerk detailed and comprehensive written directives, and shall assist, advise and instruct each county clerk, on registration of electors and election procedures which are under the direction and control of the county clerk. The directives and instructions shall include relevant sample forms of

ballots, documents, records and other materials and supplies required by the election laws. A county clerk affected thereby shall comply with the directives or instructions. [1957 c.608 §3; 1965 c.464 §1; 1979 c.190 §6]

246.150 Rules. The Secretary of State may adopt rules the secretary considers necessary to facilitate and assist in achieving and maintaining a maximum degree of correctness, impartiality and efficiency in administration of the election laws. [1957 c.608 §8; 1979 c.190 §8; 1985 c.448 §1]

247.005 Policy. It is the policy of this state that all election laws and procedures shall be established and construed to assist the elector in the exercise of the right of franchise. [1969 c.337 §3; 1979 c.190 §40]

249.006 Official dating of petitions and declarations. Immediately upon filing, a nominating petition, declaration of candidacy, withdrawal, certificate of nomination or other document required to be filed under this chapter shall be dated and time stamped by the filing officer. [Formerly 249.130]

249.007 [1985 c.508 §4; repealed by 1995 c.607 §91]

249.008 Verification of signatures by county clerk; removal of signatures prohibited after submittal. (1) Except as provided in subsection (2) of this section, before a nominating petition, minutes of an assembly of electors, or petition by individual electors is offered for filing, the county clerk of each county in which the signatures were secured shall compare the signatures of electors on the petition or minutes with the signatures of the electors on the elector registration cards. Any petition or minutes submitted for verification under this section shall contain only original signatures. The county clerk shall attach to the petition or minutes a certificate stating the number of signatures believed to be genuine. The certificate is prima facie evidence of the facts stated in it. A signature not included in the number certified to be genuine shall not be counted by the officer with whom the petition is filed.

No signature in violation of the provisions of this chapter shall be counted.

(2) If the total number of signatures presented to a county clerk for verification is 15,000 or more, the county clerk may use a statistical sampling technique authorized by the Secretary of State to verify the signatures. The sample shall be drawn from at least 100 percent of the number of signatures required for nomination.

(3) After signatures of electors on a nominating petition, minutes of an assembly of electors or petition by individual electors are submitted for verification, no elector who signed the petition or minutes may remove the signature of the elector from the petition or minutes. [Formerly 249.055; 1985 c.808 §10; 1989 c.68 §2; 1993 c.493 §6]

249.009 Exclusive form of signature sheets for petitions; numbering of signature sheets. (1) The Secretary of State by rule shall:

(a) Design the form of nominating or recall petitions, certificates of nomination by individual electors, minutes of an assembly of electors or minor political party formation petitions; and

(b) Prescribe a system for numbering all signature sheets of nominating or recall petitions, certificates of nomination by individual electors, minutes of an assembly of electors or minor political party formation petitions.

(2) Regardless of any provision to the contrary in a county or city charter or ordinance, for the purpose of nominating city or county candidates, recalling city or county officers or forming a minor political party, an individual must use the applicable form designed under this section. [Formerly 246.180; 1985 c.808 §11; 1989 c.68 §3]

249.712 Acceptance of nomination. (1) To complete a nomination, the nominee must accept the nomination.

(2) The acceptance of the nominee may be indorsed upon the certificate of nomination and signed by the nominee, or it may be indorsed by a letter or telegram from the nominee attached to the certificate and filed with it. If the acceptance does not accompany the certificate of nomination, the nominee, at any time after the certificate is filed and before the time for filing nominations for the office has expired, may file an acceptance in the same manner and in the same office where the certificate is filed. The officer with whom the acceptance is filed shall indorse it and attach it to the certificate of nomination to which it refers. [Formerly 249.760]

249.715 [1977 c.324 §2; 1979 c.190 §130; renumbered 249.735]

249.720 Information to be contained in certificate of nomination. (1) A certificate of nomination shall state:

(a) The name by which the candidate is commonly known. A candidate may use a nickname in parentheses in connection with the full name.

(b) Address information as required by the Secretary of State by rule.

(c) The office, and department or position number if any, for which the candidate is nominated.

(d) The name of the minor political party, if any, which nominated the candidate.

(e) If the candidate is nominated for a partisan office by an assembly of electors or individual electors, the word "independent" and a statement that the candidate has not been a member of a major or minor political party during at least 180 days before the deadline for filing the certificate of nomination.

(2) For certificates of nomination of candidates for electors of President and Vice President of the United States, the

names of the candidates for President and Vice President the candidates represent may be added to the name of the minor political party or the word "independent," as the case may be. The names of all the candidates of a minor political party, or independent candidates, for electors of President and Vice President may be upon the same certificate of nomination.

(3) A certificate of nomination made by an assembly of electors shall be signed by the presiding officer and secretary of the nominating convention of the assembly. A certificate of nomination made by a minor political party shall be signed by an officer of the party. An affidavit shall be made on the certificate by the presiding officer and secretary of the nominating convention of the assembly or by the officer of the minor political party and signed and acknowledged by them before a notary public. The affidavit shall be that the statements in the certificate of nomination and related documents are true. With respect to an assembly of electors, the affidavit shall state that the assembly satisfied the requirements of ORS 249.735. [Amended by 1957 c.608 §110; 1961 c.336 §3; 1973 c.841 §2; 1975 c. 678 §24; 1979 c.190 §127; 1981 c.142 §1; 1991 c.719 §8; 1993 c.797 §13; 1995 c.607 §19]

249.722 Time for filing certificate; filing officers. (1) Except as provided in subsection (3) of this section, a certificate of nomination of a candidate for public office shall be filed not sooner than the 415th day and not later than the 70th day before the date of the general election.

(2) A certificate of nomination of a candidate for:

(a) State office, United States Senator or Representative in Congress shall be filed with the Secretary of State.

(b) County office shall be filed with the county clerk.

(c) City office shall be filed with the chief city elections officer.

(3) For a special election, including an election to fill a

vacancy that occurs after the 70th day before the general election, the Secretary of State by rule may adopt a schedule specifying the period within which a certificate of nomination must be filed. If the Secretary of State does not adopt a rule under this subsection, a certificate of nomination must be filed before the 61st day preceding the election. [1979 c.190 §128; 1987 c.267 §23; 1993 c.493 §§8,9; 1995 c.607 §20; 1995 c.712 §32; 1999 c.999 §39; 2001 c.145 §2]

249.730 [Amended by 1957 c.608 §111; 1963 c.176 §2; 1977 c.324 §3; repealed by 1979 c.190 §431]

249.732 [1979 c.190 §129; 1983 c.756 §6; 1989 c.923 §28; repealed by 1993 c.493 §113 and 1993 c.797 §33]

(Nomination by Assembly of Electors)

249.735 Qualification as assembly of electors; records; notice; nomination by assembly. (1) An assembly of electors is an organized body:

(a) Of not fewer than 1,000 electors of the state for a statewide nomination.

(b) Of not fewer than 500 electors of the congressional district for which the nomination for Representative in Congress is made.

(c) Of not fewer than 250 electors of the county or any other district for which the nomination is made.

(2) An assembly of electors shall nominate candidates at a nominating convention. The convention shall be held in one day and last not longer than 12 hours. The signature, printed name and residence mailing address of each member of the assembly shall be recorded at the convention and entered of record in the minutes by the secretary of the assembly. Not less than the minimum number of electors required to constitute an assembly of electors shall have recorded their signatures in the minutes of the assembly and must be present

when the assembly nominates a candidate. The candidate receiving the highest number of votes of the assembly for the office shall be the nominee of the assembly.

(3) Not later than the 10th day before the meeting of an assembly of electors, notice shall be published at least once in not less than three newspapers of general circulation within the electoral district for which the nomination will be made. The notice shall contain the time and place the assembly will meet, the office or offices for which nominations will be made, and the names and addresses of not fewer than 25 electors qualified to vote in the assembly who desire that it be held.

(4) Proof of publication of notice in subsection (3) of this section shall be made by affidavit of the owner, editor, publisher, manager, advertising manager, principal clerk of any of them, or the printer or printer's foreman of the newspaper in which the notice is published. The affidavit shall show publication and shall be filed with the filing officer with the certificate of nomination.

(5) Not later than the 10th day before the meeting of an assembly of electors, a copy of the notice under subsection (3) of this section shall be delivered to the filing officer who will supervise the conduct of the nominating convention.

(6) The presiding officer of an assembly of electors shall deliver the signatures of assembly members entered in the minutes to the appropriate county clerks of the counties in which the assembly members live. The signatures shall be certified by the appropriate county clerk under ORS 249.008. A copy of the minutes, certified by the secretary of the assembly, and the certificate of the county clerk shall be filed with the filing officer with the certificate of nomination.

(7) If the assembly of electors designates a committee to whom the assembly delegated the authority to fill vacancies as provided in ORS 249.842, a notice containing the names of

the members of the committee shall be delivered to the filing officer with the certificate of nomination. [Formerly 249.715; 1983 c.514 §7; 1983 c.567 §9; 1985 c.808 §18; 1993 c.797 §14]

249.737 Filing officer for nomination by assembly of electors. (1) The filing officer for the office for which nominations will be considered by an assembly of electors shall supervise the conduct of the nominating convention. The filing officer shall insure that when the assembly of electors makes a nomination, the number of electors required to be present at the nominating convention for the purpose of constituting an assembly is at least equal to each of the following:

(a) The number of signatures of assembly members in the minutes of the assembly.

(b) The number of electors present at the nominating convention.

(2) If an assembly of electors will consider nominations for an office for which the Secretary of State is the filing officer and an office for which the county clerk or chief city elections officer is the filing officer, the Secretary of State shall be the supervising officer under subsection (1) of this section.

(3) If an assembly of electors will consider nominations for an office for which the county clerk is the filing officer and an office for which the chief city elections officer is the filing officer, the county clerk shall be the supervising officer under subsection (1) of this section. [1983 c.567 §11]

(Nomination by Individual Electors)

249.740 Certificates of nomination made by individual electors; statement regarding payment of petition circulators; certification of signature sheets. (1) A certificate of nomination made by individual electors shall contain a number of signatures of electors in the electoral district equal to not less than one percent of the total votes cast in the electoral

district for which the nomination is intended to be made, for all candidates for presidential electors at the last general election.

(2) Each elector signing a certificate of nomination made by individual electors shall include the residence mailing address of the elector. Except for a certificate of nomination of candidates for electors of President and Vice President of the United States, a certificate of nomination made by individual electors shall contain the name of only one candidate.

(3) Before beginning to circulate the certificate of nomination, the chief sponsor of the certificate shall file a signed copy of the prospective certificate with the filing officer referred to in ORS 249.722. The chief sponsor of the certificate shall include with the prospective certificate a statement declaring whether one or more persons will be paid money or other valuable consideration for obtaining signatures of electors on the certificate. After the prospective certificate is filed, the chief sponsor shall notify the filing officer not later than the 10th day after the chief sponsor first has knowledge or should have had knowledge that:

(a) Any person is being paid for obtaining signatures, when the statement included with the prospective certificate declared that no such person would be paid.

(b) No person is being paid for obtaining signatures, when the statement included with the prospective certificate declared that one or more such persons would be paid.

(4) The circulator shall certify on each signature sheet that the individuals signed the sheet in the presence of the circulator and that the circulator believes each individual is an elector registered in the electoral district.

(5) The signatures contained in each certificate of nomination made by individual electors shall be certified for genuineness by the county clerk under ORS 249.008.

(6) As used in this section, "prospective certificate" means the information, except signatures and other identification of certificate signers, required to be contained in a completed certificate of nomination. [Amended by 1955 c.169 §5; 1957 c.608 §112; 1971 c.152 §1; 1977 c.829 §10; 1979 c.190 §131; 1983 c.756 §7; 1993 c.493 §11; 1993 c.797 §15; 1999 c.318 §25]

249.750 [Amended by 1957 c.608 §113; 1979 c.190 §100; renumbered 249.013]

249.760 [Amended by 1979 c.190 §126; renumbered 249.712]

249.770 [Amended by 1957 c.608 §114; 1971 c.749 §79; 1977 c.324 §4; repealed by 1979 c.190 §431]

249.780 [Amended by 1957 c.608 §115; 1961 c.49 §2; 1971 c.749 §80; 1977 c.324 §5; repealed by 1979 c.190 §431]

249.790 [Amended by 1977 c.829 §11; repealed by 1979 c.190 §431]

(Register of Nominations)

249.810 Entries in register of nominations upon filing certificates. (1) Immediately after each certificate of nomination is filed, the filing officer shall enter in the register of nominations:

(a) The date the certificate was filed.

(b) The name of each candidate.

(c) The office for which the candidate is nominated.

(d) When applicable, the name of the minor political party or identification of the assembly of electors making the nomination, and the names of the chairperson and secretary certifying it.

(e) If the certificate of nomination is made by individual electors, the total number of certified signatures contained in

the certificate.

(2) As soon as an acceptance or withdrawal of a candidate is filed with a filing officer, it shall be entered in the register of nominations. [Amended by 1957 c.608 §116; 1979 c.190 §132]

249.820 [Repealed by 1979 c.190 §431]

(Withdrawals; Filling Vacancies)

249.830 Procedure for withdrawing nomination. Any person who has been nominated and has accepted the nomination under ORS 249.712 may withdraw from nomination not later than the 67th day before the general election by filing with the officer with whom the certificate of nomination was filed a written statement declining the nomination and stating the reason for withdrawal. The statement shall be signed and acknowledged by the candidate before a notary public. The withdrawal may be sent to the Secretary of State through a county clerk, as provided by ORS 249.850. [Amended by 1957 c.608 §117; 1967 c.86 §1; 1979 c.190 §133]

249.840 [Amended by 1957 c.608 §118; repealed by 1979 c.190 §431]

249.842 Filling vacancy in nomination. (1) Subject to subsection (5) of this section, before the date of the general election, a vacancy in a nomination made by a minor political party may be filled as provided by party rule.

(2) Subject to subsection (5) of this section, before the date of the general election, a vacancy in a nomination made by an assembly of electors may be filled by:

(a) Reconvening the assembly that made the original nomination to select a new nominee; or

(b) A committee to whom the assembly at its convention delegated the authority to fill vacancies.

(3) An assembly of electors may reconvene under subsec-

tion (2) of this section only at the call of the chairperson of the original assembly. An assembly will be considered the assembly that made the original nomination if the chairperson and secretary are the same as those of the original assembly.

(4) Subject to subsection (5) of this section, before the date of the general election, a vacancy in a nomination made by individual electors may be filled by filing a new certificate of nomination. The certificate of nomination to fill the vacancy shall conform with the requirements of ORS 249.720 and 249.740.

(5) The Secretary of State by rule may adopt a schedule specifying the period after a vacancy in a nomination occurs within which a certificate of nomination filling the vacancy must be filed. [1979 c.190 §134; 1985 c.808 §19; 1993 c.797 §16]

249.850 Filing of certificate to fill vacancy in nomination; notifying proper officials to make changes in general election ballots. (1) The certificate of nomination to fill the vacancy under ORS 249.842, may be filed directly with the officer with whom the certificate of nomination of the original candidate was filed, or it may be presented in duplicate to any county clerk who shall file one of the certificates in the clerk's office, immediately notify the appropriate filing officer of the nomination and send the duplicate certificate to the officer by the most expeditious method practicable.

(2) Upon receipt of notification that a vacancy has been filled, the filing officer shall certify the name of the person selected to fill the vacancy to be included on the ballot. If the certification of candidates has already been sent to the county clerk, the Secretary of State or city filing officer immediately shall give written certification of the new candidate to each county clerk responsible for preparing ballots on which the office will appear. The certification shall state the name and residence of the candidate nominated to fill the vacancy, the

office for which the nomination was made, the name of the minor political party the candidate represents or the name of the chairperson of the assembly nominating the candidate, and the name of the person for whom the candidate is substituted. Upon receipt of the certification, the county clerk shall place the new candidate's name on the ballot. [Amended by 1957 c.608 §119; 1975 c.675 §19; 1979 c.190 §135]

165-010-0005

Designating the State Candidates Manuals, County Candidate's Manual and Forms

(1) The Secretary of State designates the *2004 State Candidate's Manual: Major Political Party* and associated forms as the procedures and forms to be used by major political party candidates filing and running for state elective office.

(2) The Secretary of State designates the *2004 State Candidate's Manual: Nonpartisan* and associated forms as the procedures and forms to be used by nonpartisan candidates filing and running for state elective office.

(3) The Secretary of State designates the *2004 State Candidate's Manual: Minor Political Party* and associated forms as the procedures and forms to be used to form a Minor Political Party and by minor political party candidates filing and running for state elective office.

(4) The Secretary of State designates the *2004 State Candidate's Manual: Assembly of Electors* and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by assembly of electors for state elective office.

(5) The Secretary of State designates the *2004 State Candidate's Manual: Individual Electors* and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by individual electors for state elective office.

(6) The Secretary of State designates the *2004 County Candidate's Manual* and associated forms as the procedures and forms to be used by county office candidates and precinct committeeperson candidates filing and running for elective office.

Secretary of StateCertificate and Order for Filing

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies are true, full and correct copies of the **PERMANENT** Rule adopted on April 8, 2005 by the

Secretary of State, Elections Division — Chapter 16

Brenda Bayes — (503) 986-1518

141 State Capitol, Salem, OR 97310-0722

to become effective upon filing. Rulemaking Notice was published in the January 1, 2005 Oregon Bulletin

RULEMAKING ACTION

ADOPT: 165-014-0270

AMEND:

REPEAL:

Stat Auth: ORS 246.150, 249.008, 250.105, 250.215, 250.315, 255.175

Other Authority

Stats. Implemented: ORS 249.008, 249.061, 249.740, 249.865, 249.875, 250.045, 250.105, 250.215, 250.315, & 255.175

RULE SUMMARY

This proposed rule adopts specific standards for what constitutes a sufficient circulator's certification on Initiative, Referendum, Recall, and Candidate Nominating petitions. These standards are based on current office policy, and based on direction from the U.S. District Court, are being incorporated into administrative rule.

/s/ Brenda Bayes

Brenda Bayes

165-014-0270

Circulator Certification

(1) The purpose of this rule is to incorporate into administrative law previously enforced standards on what constitutes a sufficient circulator certification on Initiative, Referendum, Recall, and Candidate Nominating petitions.

(2) A petition signature sheet will be rejected for insufficient circulator certification if:

(a) No signature whatsoever appears below the certification;

(b) No date appears next to circulator's signature or the date is crossed out;

(c) The date of the circulator certification is earlier than the date of the electors' signatures, unless the circulator and the only signer are the same person;

(d) Original date is crossed out, and a new date is provided, but the circulator failed to re-sign;

(e) Any part of the original date is overwritten with a different date;

(f) Date information is insufficient or ambiguous. Date must be provided in month, day, year order if written in all numeric characters;

(g) The original signature of a circulator has been crossed out, and a different circulator's signature is inserted;

(h) Two individuals sign and date as circulator, unless the only signers and the circulators are the same people;

(i) White out appears on the signature or date line;

(j) The circulator has signed using only initials, unless the circulator's use of initials as a signature is verified by exemplar under paragraph (5) of this rule;

(k) The circulator has signed using a signature stamp, unless use of a signature stamp has been approved under ORS 246.025;

(l) Circulator's signature is photocopied, carbon-copied, or otherwise appears on the face of the document to be a replicated and not original signature except as provided for in ORS 250.043;

(m) Signature, printed name, and address are all illegible;

(n) Signature alone is illegible, unless the circulator's use of the apparently illegible signature is verified by exemplar under paragraph (5) of this rule;

(o) Circulator's signature is in printed script rather than cursive script, unless the circulator's use of a printed signature is verified by exemplar under paragraph (5) of this rule;

(p) If for any other reason, from the face of the signature sheet, the circulator's identity cannot be determined or it otherwise cannot be determined that the circulator executed the certification after witnessing the electors' signatures.

(3) If a petition signature sheet contains elector signatures dated both on or before the date of the circulator's effective certification and after the date of the circulator's effective certification, the signature sheet will be accepted with regard to the elector signatures dated on or before the date of the certification, but elector signatures dated after the date of the certification will not be accepted.

(4) The following defects in the circulator certification will *not* result in rejection of the signature sheet:

(a) The circulator's signature appears on the printed name line instead of on the signature line;

(b) Signature consists of full last name and at least the first name initial;

(c) The circulator has signed and dated the certification, but has not provided an address or printed name; or

(d) The circulator has re-signed and re-dated the certification and the circulator's original signature has *not* been crossed out.

(5) If a preliminary determination is made under paragraph (2)(j), (n) or (o) of this rule that a certification is insufficient, the certification signature may be verified by exemplar in the following manner:

(a) The Elections Division will first compare the certification signature to the circulator's current Oregon voter registration card signature, if available. If the certification signature matches the voter registration signature, the petition signature sheet will be accepted. If the certification signature does not match the voter registration signature, the petition signature sheet will be rejected for insufficient certification.

(b) If an Oregon voter registration card bearing the circulator's signature is not available as an exemplar, the Elections Division will compare the certification signature to an alternative exemplar filed with the Elections Division or retained on file by the Elections Division under section (6) of this rule. If the certification signature does not match the alternative exemplar provided or retained under section (6) and (7) of this rule, the petition signature sheet will be rejected for insufficient certification.

(c) If an Oregon voter registration card bearing the circulator's signature is not available as an exemplar, and an alternative exemplar has not been filed with or retained on file by the Elections Division under section (6) and (7) of this rule, the Elections Division will notify the chief petitioner or the chief petitioner's designee by telephone and electronic mail, if available, and provide the chief petitioner or designee an opportunity to submit an alternative exemplar of the circulator's signature.

(A) If an alternative exemplar is requested by the Elections Division not later than the 20th day after signatures are submitted for verification, the chief petitioners or the chief petitioner's designee must provide the alternative exemplar within 2 days of notification for the alternative exemplar to be considered.

(B) If an alternative exemplar is requested by the Elections Division after the 20th day after signatures are submitted for verification, the chief petitioners or the chief petitioner's designee must provide the alternative exemplar within 1 day of notification for the alternative exemplar to be considered.

(C) The alternative exemplar must be a signature on an official government-issued document such as a driver's license or passport, and must have been executed before the date of the attempted certification of the petition signature sheet. If the certification signature matches the alternative exemplar, the petition signature sheet will be accepted. If the certification signature does not match the alternative exemplar, the petition signature sheet will be rejected for insufficient certification.

(D) The alternative exemplar may be physically delivered to the Elections Division or may be delivered by facsimile transmission or electronic mail. If delivered by electronic mail, the document must be reproduced in .gif or .pdf format. The alternative exemplar must be received at the office of the Secretary of State not later than 5 p.m. of the day it is due.

(6) Chief petitioners may submit alternative exemplars of petition circulators' signatures at the same time they submit petition signature sheets for signature verification. The alternative exemplar must comply with the requirements of paragraph (5)(c)(C) of this rule. When submitting alternative exemplars, chief petitioners must provide a list of circulators for whom they are submitting alternative exemplars. If no list accompanies the alternative exemplars submitted under this section, those alternative exemplars will not be accepted or used

to compare the circulator's signature to the certification. If an alternative exemplar is omitted from the list, that alternative exemplar will not be accepted or used to compare the circulator's signature to the certification. Chief petitioners may still be offered the opportunity to submit alternative exemplars under paragraph (5)(c).

(7) Alternative exemplars received and accepted by the Elections Division under paragraphs (5) and (6) of this rule, will be retained on file for two years from the date of receipt.

Stat. Auth.: ORS 246.150, 249.008, 250.105, 250.215, 250.315, 255.175 Stats. Implemented: ORS 249.008, 249.061, 249.740, 249.865, 249.875, 250.045, 250.105, 250.215, 250.315, & 255.175